Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1446

JOAN ROE, PETER POE and COE PRESS, INC.,

Petitioners,

-v.-

JANE DOE,

Respondent.

On Writ of Certiorari to the Court of Appeals of the State of New York

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AFFIRMATION IN OPPOSITION

EPHRAIM S. LONDON
575 Madison Avenue
New York, New York 10022

Counsel for Respondent

(4335)

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No. 73-1446

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AFFIRMATION IN OPPOSITION

EPHRAIM S. LONDON, an attorney

admitted to practice in this Court, states:

1. I am the attorney for the Respondent in this case and make this statement in opposition to the motion of the American Civil Liberties Union and the Civil Liberties Union of Massachusetts for leave to file a brief as amici in support of the Petitioners' position.

2. The motion is opposed because the application is not timely, and because the brief relates primarily to an issue not properly before the Court. It may be added that the brief would be of little help to the Court. The amici suggest at page 14 of their brief that the appropriate remedy for the wrong to Respondent is open discussion in "the market place of free ideas." In this case, the sale of a book by a psychiatrist was enjoined because the book disclosed

intimate details of the patient's life and thoughts confided to the psychiatrist during treatment. We do not understand how the wrong to the patient could be remedied by open discussion of the circumstances of the patient's life or of her treatment by the psychiatrist.

3. Although the motion for leave to file a brief does not make any reference to the fact, the amicus brief is, as stated before, offered in support of the Petitioners' position. The Petitioners' brief was due and was served (after two extensions of time) on August 2, 1974. Under subdivisions 2 and 3 of Rule 42 of the Rules of this Court, the motion for leave to file the proposed brief should have been filed on or before August 2, 1974. The motion was served September 23, 1974. The amici do not offer an explanation of

the late application. They were aware of the proceeding a sufficient time before August 2nd to have completed their brief before that date. The attorney for the Petitioners in this case is one of the counsel for the amicus, American Civil Liberties Union. The American Civil Liberties Union was also aware of this case long before August 2, 1974 because its affiliate, the New York Civil Liberties Union, had been asked to file a brief when the case was on appeal to the New York Court of Appeals. After hearing both counsel, the New York Civil Liberties Union determined that it ought not to intervene in support of the position of the Petitioners or the Respondent. The American Civil Liberties Union reached its decision to intervene without consulting with the attorneys for the Respondent.

4. There would be very little reason to accept the amicus brief even if the motion for leave to appeal had been timely. The amicus brief is concerned primarily with a stated conflict between the right of privacy and freedom of speech or press. (See motion papers at pages 1 to 3.) As set forth in the Respondent's brief (at pages 13 to 15), that question is not properly presented for review in this case.

Dated: September 23, 1974

EPHRAIM S. LONDON